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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: NOV 16 2011 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hard disk drive storage technology business. It seeks to permanently employ the beneficiary in the United States as a '[redacted]' The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1]

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the instant petition is December 27, 2006, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director denied the petition on August 15, 2008. The decision concluded that the beneficiary did not possess a degree in the field of study required to perform the duties of the offered position as set forth on the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).[3]

The required education, training, experience and skills for the offered position are set forth at Part H

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[1] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

H.4. Education: Bachelor's degree.
H.4B. Major field of study: "Systems Engineering."
H.5. Training: None required.
H.6. Experience in the job offered: 60 months required.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: "Professional experience must include supply chain management application and project implementation using i2 suite, demand management, replenishment planner, supply chain management, Hub/LC, and project management."

Therefore, the labor certification states that the proffered position requires a bachelor's degree in systems engineering and 60 months of experience in the job offered. The labor certification specifically states that no alternative field of study is acceptable.

The record of proceedings contains a copy of the beneficiary's diploma and transcripts for his four-year Bachelor of Mechanical Engineering degree from [redacted]

The record contains a credentials evaluation of Professor [redacted] Professor of Computer Information Systems with [redacted] dated August 30, 2005. The evaluation states that the beneficiary's Bachelor of Mechanical Engineering Degree from [redacted] is "the equivalent of a Bachelor of Science Degree, with a major in Mechanical Engineering, from an accredited institution of higher education in the United States." The evaluation also concludes that the beneficiary's education, combined with eight years of employment experience in systems engineering, is equivalent to a Bachelor of Science in systems engineering.

The record also contains a credentials evaluation of [redacted] of [redacted] Consultants Limited, dated July 25, 2008. The evaluation states that the beneficiary's Bachelor of Mechanical Engineering Degree from [redacted] is the equivalent of "Bachelor in Computer Science [from] an institution of postsecondary education in the United States of America."

As is noted above, the director's decision denying the petition concluded that the beneficiary's bachelor's degree in mechanical engineering does not satisfy the labor certification requirement of a bachelor's degree in systems engineering.

In order for the petition to be approved, the petitioner must also establish the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date.

8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. at 159; *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401, 406 (Comm'r 1986). See also, Madany v. Smith, 696 F.2d 1008 (D.C. Cir. 1983); K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006 (9th Cir. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F.2d 1 (1st Cir. 1981).*

The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith,* 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve "reading and applying the plain language of the [labor certification]." *Id.* at 834.

Even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Snapnames.com, Inc. v. Michael Chertoff,* 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* at *7.[4]

The minimum education, training, experience and skills required to perform the duties of the offered position is set forth at Part H of the labor certification, and are discussed in detail above. The labor certification, *as prepared by the petitioner and certified by the DOL,* states that the proffered position requires a bachelor's degree in systems engineering and that no other field of study is acceptable. The labor certification does not state that the educational requirements of the offered position could be met with a bachelor's degree in a different or related field of study.

The beneficiary's Bachelor of Engineering in Mechanical Engineering is not a bachelor's degree in systems engineering. Neither of the evaluations submitted with the petition concludes that the

[4] In *Snapnames.com, Inc.*, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at *17, 19.

beneficiary possesses a bachelor's degree in systems engineering.
On appeal, counsel claims that the [redacted] concludes that the beneficiary has the equivalent of a degree in computer science, and that a computer science degree is "substantively the same as" and "identical to" a degree in systems engineering. However, counsel submits no evidence in support of this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, the AAO does not accept the conclusion of the [redacted] that the beneficiary's Bachelor of Mechanical Engineering is equivalent to a bachelor's degree in computer science.[5] The beneficiary's transcripts show that he has almost no computer-related courses. The [redacted] states that the beneficiary has the equivalent of a bachelor's degree in computer science because both mechanical engineering and computer science programs require courses in math and physics, and because some master's degree programs in computer science accept persons with degrees in fields of study other than computer science. These stated reasons do not support the conclusion that a mechanical engineering degree almost completely devoid of any computer-related courses is equivalent to a computer science degree.

Counsel also claims that the director erred because the [redacted] 2008-2009 edition reports that most employers of systems analysts prefer applicants who have at least a bachelor's degree in computer science, information science, engineering or management information systems." However, at issue here are the minimum requirements of the offered position set forth on the labor certification submitted with the instant petition, not the general preferences of U.S. employers of systems analysts.

The labor certification states that the offered position requires a bachelor's degree in systems engineering. There is no ambiguity or inconsistency in the stated requirements on the labor certification.

The AAO does not dispute that there is some overlap between the two fields of study, however, the fact remains that mechanical engineering and systems engineering are two separate fields of study, and the record is devoid of evidence to the contrary.

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[5] USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

According to the Classification of Instructional Programs (CIP),[6] a systems engineering degree involves:

> total systems solutions to a wide variety of engineering problems, including the integration of human, physical, energy, communications, management, and information requirements as needed, and the application of requisite analytical methods to specific situations

http://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cipid=88247 (last accessed September 6, 2011).

Conversely, CIP states that a mechanical engineering degree involves:

> physical systems used in manufacturing and end-product systems used for specific uses, including machine tools, jigs and other manufacturing equipment; stationary power units and appliances; engines; self-propelled vehicles; housings and containers; hydraulic and electric systems for controlling movement; and the integration of computers and remote control with operating systems

http://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cipid=88233 (last accessed September 6, 2011).

The evidence in the record is not sufficient to establish that the beneficiary possesses a bachelor's degree in systems engineering, or that systems engineering is an identical field to mechanical engineering. Therefore, the beneficiary does not meet the minimum requirements of the job offered, as those requirements are unambiguously stated on the labor certification prepared by the petitioner and certified by the DOL.[7] To find otherwise would undermine the well-established role of USCIS

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[6] The CIP was developed by the U.S. Department of Education's National Center for Education Statistics to provide a taxonomic scheme that supports the accurate tracking and reporting of fields of study and program completions activity. *See* http://nces.ed.gov/ipeds/cipcode/default.aspx?y=55 (last accessed September 6, 2011).

[7] We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with

to determine whether the beneficiary qualifies for the offered position set forth on the labor certification.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

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the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a). Further, the instant case does not involve the USCIS interpreting a purportedly ambiguous term like "or equivalent." The educational requirements of the offered position stated on the labor certification are clearly and unambiguously stated.